Burns International Security Service, Inc. *and* International Union, United Plant Guard Workers of America (UPGWA), Petitioner. Cases 13-RC-15462 and 13-RC-15467

July 30, 1981

DECISION ON REVIEW AND DIRECTION OF ELECTIONS

On July 29, 1980, the Regional Director for Region 13 issued a Decision and Order in the above-entitled proceeding in which he found the petitioned-for single-employer units inappropriate in view of a history of multiemployer bargaining. Accordingly, he dismissed the petitions. Thereafter, pursuant to the National Labor Relations Board Rules and Regulations, Series 8, as amended, the Petitioner filed a timely request for review of the Regional Director's decision on the grounds that he departed from precedent in finding that the multiemployer agreement was sufficiently operable to the employees sought to constitute a bar to any elections in single-employer units.

By telegraphic order dated August 27, 1980, the National Labor Relations Board granted the Petitioner's request for review. The Intervenor, General Service Employees Union Local 73, Service Employees International Union, AFL-CIO, filed a brief on review.

The Board has considered the entire record in this case, including the brief on review, with respect to the issues under review and makes the following findings:

The Employer provides guards and security services under contract with Commonwealth Edison at the Dresden nuclear power plant (Morris, Illinois) and at the Zion nuclear power plant (Zion, Illinois). These two plants are within the Employer's Nuclear Unit, which in turn, is within the Hinsdale Region of the Employer's Central Group located in Chicago, Illinois. The Employer began operations at the Dresden and Zion locations in 1977, in each case considering itself the successor employer to the firms previously supplying guards and security services. At that time, the Employer voluntarily recognized the Intervenor herein as the collective-bargaining representative of employees at these locations.

The Employer has been a member of Associated Guard and Patrol Agencies,[1] a multiemployer bargaining association, for 25 years. The Association is comprised of 17 companies and has negotiated a series of collective-bargaining agreements with the Intervenor. The most recent contract, effective from July 1, 1977, through June 30, 1980, was signed by the 17 member companies, including the Employer, as well as by 37 nonmember signatories. The petitions were timely filed in relation to this contract, on April 18 (Zion) and April 24 (Dresden). The recently expired contract covers approximately 5,800 guards, including about 900 employed by the Employer. Prior to July 1, 1977, employees of the Employer's predecessors at Dresden and Zion were covered by collective-bargaining agreements between the Intervenor and the Association. At the time of the hearing in the instant case, negotiations for a new Association contract were in progress. A representative of the Employer was on the Association's negotiating committee, and the Employer had agreed to be bound by the negotiations.

The Petitioner seeks to represent employees in two separate single-employer units or, alternatively, a combined unit of the 100 guards at Dresden and the 85 guards at Zion. The Employer and Intervenor contend the long bargaining history between the Intervenor and the Association renders single-employer units inappropriate.[2] The Petitioner asserts that the multiemployer bargaining history is not controlling as many of the contractually provided benefits expressly are not applicable to the Dresden and Zion employees it seeks to represent. Moreover, these employees do not realize the benefits of "effective representation" under the agreement between the Intervenor and the Association. Therefore, such a history of bargaining cannot be a bar to separate representation of these employees in single-employer units. We find merit in the Petitioner's contentions.

As found by the Regional Director, the most recent contract between the Association and the Intervenor is applicable to guards working in the Chicago metropolitan area, which is further divided into Areas A and B. The Dresden and Zion plants both have been treated by the parties as being located within Area B, although only Zion is clearly within the Area B description appended to the agreement. Certain terms are applicable to all employees covered by the agreement, while other terms expressly exclude application to Area B employees. Among those provisions not applicable to Area B, but which are contractually established for Area A, are: sick benefits, vacations, call-in pay, extra travel fare, limitation upon breakage and loss liability, canceled accounts, holidays, seniority for union officers, grievance time pay, employment examination expenses, limitations on stationary standing posts, extra work refusal, health and welfare

[1] Hereinafter called the Association.

[2] However, at the end of the hearing, the Employer's attorney stated that, if there were to be an election, the Employer would want there to be two elections, one at each site.

trust fund, and funeral pay. The record discloses, however, that Dresden and Zion employees receive nonwage benefits in the areas of sick leave and holidays, and have an alternative health and welfare policy which was negotiated by the Employer's predecessors and continued by the Employer. Further, the agreement sets out only minimum wages for employees and these minimum wages differ for Area A ($3.50 per hour after 1 year's seniority) and for Area B ($2.70 per hour after 1 year's seniority). Guards at the Dresden and Zion sites, however, currently receive $6.70 per hour after 1 year's seniority. Wage rates for Dresden and Zion were established by letter sent from the Employer to the Intervenor designating the guard positions at these sites as premium jobs.[3] Further, the record discloses that contractual benefits differ widely between Areas A and B in several categories. As noted earlier, many provisions are expressly not applicable to Area B employees (thereby apparently excluding the Dresden and Zion locations). The sick leave, holiday, and health and welfare benefits which are received by Area B employees are not incorporated into the basic agreement by any express provision of supplemental agreement.[4] It is unclear from the record exactly how these benefits were achieved and why they have not been included in the contract.

The Intervenor contends that its multiemployer bargaining history has afforded genuine and significant representation to the Dresden and Zion employees, as well as stabilized labor relations at these sites since they opened in 1974. It urges that the Dresden and Zion employees enjoy established terms and conditions under the contract,[5] and that the premium letter procedure provides a flexible means by which these employees achieve premium wages and benefits in addition to their contractually established rights.

It is well settled that a contract must "chart with adequate precision the course of the bargaining relationship,"[6] in order that the parties may look to its actual terms and conditions as a guide in their day-to-day relations. While limited adjustments to an agreement through individual negotiations are not inconsistent with a multiemployer unit,[7] where the terms and conditions of employment of employees purportedly covered by such an agreement vary substantially from those incorporated in the contract, such contract will not constitute a bar to a representation petition. The record shows that while the list of subjects covered by the contract is widespread, many of its provisions expressly do not apply to employees in Area B which includes the Dresden and Zion sites. On the other hand, the Dresden and Zion guards receive certain benefits, detailed earlier, which the contract terms as "not applicable" to Area B employees. Moreover, there is no showing that these benefits were obtained through associationwide bargaining. In addition, although article XIII, section 4 requires an employer to report "premium jobs" to the Union, neither the locations of such premium jobs nor the rates paid at those locations can be determined from the agreement. Further, the record discloses that individual employers establish the rates for their respective premium jobs, and, as the Intervenor's representative testified, there is no way of telling how many different wages have been established.

The Board has long been mindful of the beneficial stability and uniformity of labor conditions to be achieved through associationwide bargaining coextensive with employee units of various employers in the same industry. It will not, however, give deference to such multiemployer bargaining history where it is shown that the fruits of such bargaining were not translated into terms and conditions of employment applicable to employees sought to be separately represented.[8]

In our view, the multiemployer bargaining history herein, particularly as reflected in the most recent agreement as it applies to the unit employees at the Dresden and Zion locations, does not demonstrate that the benefits and stability to be achieved through associationwide bargaining have inured to those employees. Rather, it appears that bargaining on crucial terms and conditions of employment has been relegated to individual employers. Therefore, the Board's policy reasons for preserving multiemployer bargaining have been diminished by the Association's own practices. In these circumstances, we conclude that the bargaining history is not controlling as to the Dresden and Zion employees, and does not bar the processing of the representation petitions filed by the Petitioner.

[3] Art. XIII, sec. 4, of the agreement provides that: "An Employer will report all premium jobs to the Union, giving the location and employees' rates of pay for such jobs." The parties refer to such report as a "premium letter."

[4] For example, Dresden and Zion employees receive time and a half if they work on a holiday, although no holiday pay system is specified in the contract for Area B; however, Area A employees receive double time pay for holidays.

[5] These include: minimum wage rates, leaves, uniforms, promotions, hours of work and overtime, transfer provisions, protection against unjust discipline and discharge, seniority rights, union representation, grievance and arbitration procedures (in fact, these employees have a two-step grievance procedure as compared to a one-step procedure for Area A employees), union security and dues checkoff, protection of benefits against reduction during life of the agreement, as well as improved benefits or wages through the premium letter procedure.

[6] *Appalachian Shale Products Co.*, 121 NLRB 1160, 1163 (1958).

[7] *The Kroger Co.*, 148 NLRB 569 (1964).

[8] *The Lamson Brothers Company*, 59 NLRB 1561 (1945).

The Appropriate Unit

The Dresden and Zion sites are within the Employer's Nuclear Unit-Hinsdale Region. Two additional Employer locations (Cordova, Illinois, and LaCrosse, Wisconsin) are also within the Nuclear Unit.[9] The Petitioner seeks to represent guards at Dresden and Zion in separate bargaining units or, alternatively, in a combined unit. As noted earlier, the Employer would agree to two separate units if elections are directed. The Intervenor, urging dismissal of the petitions in view of the bargaining history, maintains that two separate units are inappropriate, but that a single unit composed of both sites would be less inappropriate.

As found by the Regional Director, approximately 100 guards work at Dresden and 85 work at Zion. These guards enforce rules promulgated by Commonwealth Edison and the Nuclear Regulatory Commission. At each site, there is a hierarchy of authority for day-to-day operations and labor relations matters, which includes: a site commander (or captain), an assistant site commander, shift lieutenants, and sergeants.[10] Additionally, at each site there is a lieutenant who acts as training coordinator, as well as a lieutenant who is the administrative officer. The site commanders report to Raymond Benn, an operating manager for the Employer located at Zion. Benn testified he has overall responsibility for both locations, including labor relations, on-site visitations, and conferences with site commanders. Benn also has limited training responsibility for all sites within the Nuclear Unit.

Site commanders make recommendations as to promotions, demotions, or discharges at their respective sites. Benn testified he reviews recommendations and may sit in on a promotion interview, but he stated he has never turned down a promotion recommended by a site commander, although he has that authority.[11] Recommendations as to discharges made by the site commanders are independently investigated by the Nuclear Unit's headquarters. Although applications for guard positions have been taken at the specific locations, generally all applicants are interviewed in the headquarters office at Bensonville, Illinios, and final hiring decisions are made there. Testimony is not clear, however, as to whether or not the individual site commanders interview or screen applicants.

Wages, benefits, skills, and offsite training are the same for all employees; however, if an employee transfers sites, he would have to have on-the-job training for the particular location. Payrolls are separate and checks are issued from the Employer's New York office. Personnel records are maintained at each site and at the Nuclear Unit office. Interchange is infrequent and there have been only one or two transfers between Dresden and Zion since the Nuclear Unit's inception in February 1979. These apparently were requested by the employees. Separate seniority lists are maintained at each site which control selection for layoffs, while contractual benefits are determined by anniversary date of employment. Grievances are initially handled by the site commander. If not resolved at that level, Operating Manager Benn or one of his superiors becomes involved. If still not resolved, the matter may be taken before a joint arbitration board,[12] then, if necessary, before an impartial arbitrator.

We find that the single-location units sought by the Petitioner are appropriate for bargaining. Although the Employer has established centralized hiring and offsite training procedures, the individual site commanders exercise immediate, direct supervision of the day-to-day operations at their respective power plant sites. They also have responsibility for personnel matters once the applicant has been hired. Thus, they effectively recommend promotions, demotions, and handle the first step in the grievance procedure in an effort to resolve grievances. Apart from discharge recommendations, which are independently investigated, site commanders' recommendations in these other personnel areas are followed. In addition, it is noted that the guards at each location receive specialized training particular to the site where they are employed, and there is little or no employee interchange between these two sites which according to the record are over 100 miles apart.[13]

On the basis of the foregoing and the record as a whole, we find that the following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

> All guards employed by the Employer at Dresden nuclear power plant at Morris, Illi-

[9] Guards at the Quad Cities plant at Cordova are represented by the Petitioner pursuant to a Stipulation for Certification Upon Consent Election issued in December 1979. The LaCrosse location had been open only 2 weeks at the time of the hearing.

[10] The parties stipulated that sergeants, lieutenants, and captains are supervisors and should be excluded from any unit that may be found appropriate.

[11] Benn further testified that "it is not our policy to say yes or no, it is our policy to review. We feel that the site commander is in the best position to determine who would make the best supervisor."

[12] This joint arbitration board is composed of equal numbers of representatives of the Intervenor and the Association.

[13] *The Wackenhut Corporation*, 224 NLRB 1142 (1976). *Contra: Sentry Security Services, Inc.*, 230 NLRB 1170 (1977) (separate unit found inappropriate where the employer's operations were highly centralized and there was a substantial amount of interchange and transfers); and *The Wackenhut Corporation*, 213 NLRB 293 (1974) (where there were substantial transfers of guards to other sites and a lack of authority in the site supervisor).

nois, excluding all other employees and supervisors as defined in the Act.

All guards employed by the Employer at its Zion, Illinois nuclear power plant, excluding all other employees and supervisors as defined in the Act.

[Direction of Elections[14] omitted from publication.][15]

CHAIRMAN FANNING, dissenting:

I cannot join my colleagues in directing elections in single-location units and in ignoring 25 years of bargaining history on a multiemployer basis.

The facts are not in dispute. Burns, the Employer, has been a member of the Associated Guard and Patrol Agencies (AGPA) for the past 25 years. During that period it has been party to a series of collective-bargaining agreements negotiated with the Intervenor by AGPA. Burns had a representative on the AGPA negotiating team for the contract expiring in June 1980 and, at the time of the hearing in this case, had two representatives on the APGA team negotiating a successor contract. There is no contention or evidence that either Burns or any other APGA member did not agree to be bound by negotiations between the APGA and the Intervenor and, in fact, the Regional Director found otherwise.

The basis for the majority's decision lies in the recently expired agreement between the Intervenor and AGPA, which applies to guards at workplaces in the Chicago metropolitan area[16] and divides this area, geographically, into Areas A and B. The agreement contains provisions uniformly applicable to all employees covered, such as grievance and arbitration, union security, seniority, transfers, promotions, and discharges.[17] However, the agreement also contains certain other provisions only applicable to Area A employees. These include sick benefits, vacations, call-in pay, extra travel fare, holidays, a health and welfare program, and funeral pay. Further, the agreement sets only minimum wages scales for employees in each area, allowing an employer to raise wages above the minimum by sending a "premium letter" to the Intervenor.

The Dresden and Zion facilities involved in this proceeding are treated as being located in Area B. The employees at these facilities receive wages higher than the contract minimum, which were established pursuant to the agreement by a "premium letter" sent by Burns to the Intervenor. Also, Burns has provided these employees with certain benefits not provided Area B employees by contract, such as vacation benefits, holiday pay, sick leave, and a health and welfare program.[18]

As the Regional Director correctly noted, a multiemployer unit exists when, as here, the parties have indicated an unequivocal intent to be bound in their collective bargaining by group rather than individual action,[19] and that when parties have bargained in a multiemployer unit for a substantial period of time, as the parties here have, that bargaining history in ordinarily determinative of scope of the appropriate unit.[20] My colleagues do not dispute these well-established principles. Rather, because the employees of the Zion and Dresden facilities receive higher-than-minimum contract wages as well as some benefits not provided them by contract, my colleagues conclude that the benefits and stability to be achieved through association bargaining have not inured to these employees and, therefore, there is no reason to preserve the historic associationwide unit. In doing so, my colleagues, first, misapply existing law and, second, rely on a 36-year-old decision which, on its facts, is clearly distinguishable.

My colleagues first note that a contract must "chart with adequate precision the course of the bargaining relationship,"[21] and that "where the terms and conditions of employment of employees purportedly covered by such an agreement vary substantially from those incorporated in the contract, such contract will not constitute a bar to a representation petition." I might agree with that general proposition if it had anything to do with this case. However, contract bar is not alleged here and the question of whether a contract, the result of bargaining, is sufficient to bar an election is distinct from the question of unit scope—the unit in which bargaining or an election takes place.[22] In

[14] [*Excelsior* footnote omitted from publication.]

[15] As found by the Regional Director, the Intervenor admits to membership employees who are not statutory guards. It is, therefore, ineligible under Sec. 9(b)(3) for certification by the Board. It may, however, intervene as it is the incumbent union representing employees at Dresden and Zion. If the employees elect representation by the Intervenor, the results may be arithmetically certified. *The Wackenhut Corporation*, 223 NLRB 83 (1976).

[16] The 17 members of the APGA are signatory to the agreement as well as 37 other companies, which are not APGA members. The agreement covers approximately 5,800 guards, including 900 employed by Burns.

[17] Other provisions listed by the Regional Director are management rights, maintenance standards, leaves of absence, free uniforms, hours of work and overtime, paystubs, union representation, add-ons, and strikes.

[18] These benefits differ from those provided in the agreement for Area A employees.

[19] *Van Eerden Company*, 154 NLRB 496 (1965).

[20] *The John J. Corbett Press Corporation*, 172 NLRB 1124 (1968).

[21] *Appalachian Shale Products Co.*, 121 NLRB 1160, 1163 (1958).

[22] I do not indicate, assuming the question would ever be raised, whether or not I would find the AGPA/Intervenor contract sufficient to bar an election in the multiemployer unit. I note however, that as far as the employees of the Dresden and Zion facilities are concerned, this is not a case where the actual working conditions vary substantially from

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this case, the latter question is, as the Regional Director recognized, addressed by Board policy as to multiemployer units.

Next, the majority relies on *Lamson Brothers*,[23] which it cites for the proposition that a multiemployer bargaining history is not controlling "where it is shown that the fruits of such bargaining were not translated into terms and conditions of employment applicable to employees sought to be separately represented." Even assuming that to be the holding of *Lamson Brothers*, the case is clearly distinguishable. There, the Board found that the only evidence that collective bargaining had taken place on an associationwide basis was the existence of written contracts. That is not the case here. There, the Board found that no machinery existed and that no bargaining had been conducted for the purpose of amplifying the general provisions of the contracts into terms applicable to the particular conditions of the petitioned-for employees. Here, however, the parties negotiated the "premium letter" provision as a way of amplifying the minimum wages set forth in their agreement.[24] Also, as the Regional Director found, there exists a specific grievance procedure which is applicable to both Area A and Area B and has been used by Burns' employees. Further, in *Lamson Brothers*, the Board noted that a number of the unions which claimed to represent the petitioned-for employees in the alleged multiemployer unit were not signatory to the collective-bargaining agreement, a fact which raised doubt as to whether some employees were covered by the agreement at all. No such situation exists here. Thus, unlike *Lamson Brothers*, there is no basis to conclude that actual multiemployer bargaining has not taken place in this case, or that a stable and viable multiemployer unit does not exist.

Nor is there reason to assume, as the Petitioner argues, that the Dresden and Zion employees have not received "effective" representation through multiemployer bargaining. For there is no evidence that the exclusion of Area B employees from certain benefits provided those in Area A resulted from anything other than the arm's-length collective bargaining on a multiemployer basis.[25] There is also no evidence that those contract provisions applicable to the Dresden and Zion employees have not been abided by or enforced. As the Regional Director concluded, the fact that the AGPA/Intervenor agreement provides different benefits for employees in Area A and Area B, at most, tends to establish that bargaining has been conducted for two distinct multiemployer units. It does not support the proposition that, given such a bargaining history, the single-location units sought here are appropriate. It does not establish that bargaining of crucial terms and conditions of employment has been "relegated" to individual employers.

In reaching its decision in this case, the majority has focused on the result of the bargaining rather than its form. My colleagues may feel that the Intervenor might and should have negotiated a better contract for Area B employees. They may feel that those employees should not have been excluded from receiving certain benefits,[26] and, in this regard, that the employer members of the AGPA got the better part of the bargain. I might agree. However, regardless of the nature of the bargain, it clearly was struck through multiemployer bargaining in which all the parties agreed to be bound by group action. Therefore, as the Regional Director concluded, there is no reason for failing to follow the normal Board policy which requires finding single units inappropriate in the face of such a 25-year bargaining history.

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those incorporated in the contract. As to Area B employees, the contract merely does not provide certain benefits and the wages of Dresden and Zion employees were raised above the contract minimum by the procedure incorporated in the contract. Further, the fact that the Dresden location is treated as an Area B facility when it would appear to fall geographically in Area A is merely a question of contract interpretation, not contract sufficiency.

[23] 59 NLRB 1561.

[24] The wages of Dresden and Zion employees were raised pursuant to this provision.

[25] The Regional Director found that some individual bargaining "probably" takes place. In contrast, the Petitioner asserts in its brief that the Intervenor has never bargained individually with any AGPA member. In any event, it is well established that individual adjustments between a union and employer association members are not inconsistent with a multiemployer unit. See *The Kroger Co.*, 148 NLRB 569 (1974).

[26] The record is silent as to the reason Area B employees were excluded from certain benefits given Area A employees. However, in the absence of evidence to the contrary, I must assume that the differentiation has a rational basis.